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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing
Filing Date: March 16, 2018

Case No.: PSH-18-0027

Issued: June 8, 2018

Administrative Judge Decision

James Thompson, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (the “Adjudicative Guidelines”), I conclude that the Individual should not be granted access authorization.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The Individual submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to the U.S. Office of Personnel Management (OPM) in June 2017. Ex. 7 at 42. The Individual disclosed on his e-QIP that the state in which he resides placed tax liens on two automobiles and one recreational vehicle owned by the Individual in January of 2014, and that he subsequently set up a payment plan to address the liens. *Id.* at 35. The Individual also disclosed that he had one debt that was turned over to collections, that he sold a vehicle he owned because he was unable to make the payments, and that he was over 120 days delinquent on another debt concerning a vehicle. *Id.* at 36–39. OPM ran a credit report on the Individual, and the report revealed that the Individual had incurred significant additional debts that were past due or placed for collections. Ex. 6 at 7–9.

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

As part of its evaluation of the Individual for a security clearance, the local security office (LSO) conducted a Personnel Security Interview (PSI) of the Individual in November 2017. Ex. 8. During the PSI, the Individual admitted that he remained significantly indebted; that lenders had repossessed a vehicle for which the Individual remained indebted; that the Individual had surrendered two vehicles to lenders for which the Individual remained indebted; and that the Individual incurred significant, high-interest debt in connection with purchasing a new vehicle as recently as 2015. *See* Ex. 1 at 1-2.

As the PSI raised unresolved security concerns, the LSO informed the Individual, in a Notification Letter dated February 6, 2018 (“Notification Letter”), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under “Guideline F, Financial Considerations.” Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE introduced nine numbered exhibits (Ex. 1-9) into the record and did not offer any witness testimony. The Individual introduced eight exhibits (Ex. A-H) into the record and presented his own testimony and the testimony of his wife and supervisor.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As previously indicated, the LSO cited Guideline F as the basis for denying the Individual a security clearance. Ex. 1. Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Guideline F at ¶ 18. In citing Guideline F, The Notification Letter relied upon the Individual’s outstanding debts: \$8,149 of the Individual’s debts were in collections and the Individual stated during his PSI that he owed \$22,000 for vehicles which were surrendered, repossessed, or sold. Ex. 1 at 1-2. The Notification Letter additionally cited the following concern with regard to the Individual’s financial irresponsibility and unwillingness or inability to satisfy his debts: during his PSI, the Individual admitted to having purchased a new vehicle in 2015, with a \$600 monthly payment, despite not being able to meet his debt obligations at that time. Ex. 1 at 1-2. The Individual’s documented history of indebtedness, inability or unwillingness to satisfy his debts, and admission to incurring additional indebtedness while being unable to meet his current obligations justify the LSO’s invocation of Guideline F in the Notification Letter. Guideline F at ¶ 19(a)–(c), (e).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

During the hearing, the Individual acknowledged that the information in the PSI accurately reflected his responses to the questions presented during the interview. Tr. at 38. Similarly, the Individual did not dispute the facts articulated in the Notification Letter. The record, therefore, demonstrates that at the time of the PSI, the Individual had the following delinquent accounts:

- A \$413 debt with Capitol One which he used to purchase necessities such as food and gas. Ex. 8 at 2.
- Two University of New Mexico (UNM) medical bills totaling \$239 that resulted from a shortfall in insurance coverage for his wife's healthcare. *Id.* at 23-24.
- Two separate accounts with 12 World Finance for a total of \$3,960 that resulted from a high-interest loan he incurred to purchase a washer and dryer. *Id.* at 12-13, 17.
- A payday loan account with PDO Financial, LLC, (PDO) for \$3,537. Tr. at 43.
- Three separate accounts with Kirtland Federal that totaled \$22,000, which represents the remaining unsatisfied amount for the three repossessed or surrendered vehicles. Ex. 8 at 52-53.

The record also demonstrates that the Individual has had a significant history of struggling to meet his financial obligations. For instance he failed to file his 2011 taxes because he had "pretty much given up" trying to meet his financial obligations. Ex. 8 at 80-81. He struggled even though he made "decent money." *Id.* at 28. The delinquencies at present, however, originated near the end of 2013, when the Individual moved with his wife and daughter to the west coast for his job. *Id.* at

15. At that time, he stopped making payments on one of his vehicles, a 2007 trailer, as his financial situation “spiraled out of control.” *See* Tr. at 67; Ex. 8 at 28. His wife and daughter “lasted there about four months” before they both returned to Albuquerque. Ex. 8 at 15. The Individual remained in the west. Ex. 8 at 15. As a result, the Individual began supporting two residences. *Id.* at 12. He incurred the 12 World Finance loans at that time to purchase a washer and dryer for the Albuquerque residence. Tr. at 62.

The Individual subsequently left his job in the west and returned to Albuquerque in 2014. *Id.* at 20. On his return, he obtained a less lucrative job and continued to struggle financially. Ex. 8 at 28-29. He also began having payment issues with his 2012 truck and his wife’s 2010 car. Tr. at 71-2. However, in 2015, the Individual purchased a brand new car for his wife. Ex. 8 at 54. His daughter took possession of, but not financial responsibility for, the 2010 car. *Id.* He also incurred the UNM medical bills. Tr. at 63. As a result of the accumulated financial pressure, the Individual took on a second job, which became prohibitively burdensome. *See* Ex. 8 at 58. He was therefore unable to make payments toward the family vehicles: the 2010 car was repossessed in 2017, and he subsequently surrendered his trailer and truck. *Id.* at 45, 52. Surrendering the vehicles, however, did not satisfy his financial obligation to the creditor, Kirtland Financial.

At the hearing, the Individual addressed each delinquent account and explained the steps that he had taken in order to address the DOE’s security concerns. For each account listed in the Notification Letter, the Individual provided evidence that he had either fully paid the outstanding debt or successfully arranged a payment agreement that, if adhered to, would satisfy the outstanding debt. The Individual testified that he had satisfied the Capitol One debt, Tr. at 39, and both UNM medical bills. Tr. 44-45; Ex. 2. At 4. For the 12 World Finance accounts, he reached an agreement to remit a little more than half of the original debt, and he had made three scheduled payments prior to the hearing. *Id.* at 40-41; Ex. 2 at 3; Ex. D. As for the PDO account, he was able to set up a repayment plan for which he had submitted two payments prior to the hearing. Tr. 43-44; Ex. 2 at 2; Ex. E. Lastly, as for the three Kirtland Federal accounts, the Individual provided evidence that he had reached an agreement with the creditor and remitted the first \$500 payment on April 20, 2018. Tr. 45-46; *see also* Ex. F.

The Individual also testified that he started setting up the above scheduled payment arrangements in March of 2018. Tr. at 75. The record demonstrates that he satisfied the Capital One debt and UNM medical bills in late February 2018. Ex. 2 at 2, 4. While his income significantly improved when he obtained his current position in June 2017, he did not immediately initiate payment arrangements because he “had some trouble getting ahold of some of the creditors” and because he felt “overwhelmed” and “stuck, not knowing where to start.” *Id.* at 74-75.

Finally, the Individual explained that he was confident that the same situation that created his financial concerns would not arise in the future. By way of explanation, he testified that his current position provides a better income than the two jobs he previously worked when his financial issues became overwhelming. *See Id.* at 54, 74. He also stated that he was taking advantage of the opportunity to work substantial overtime hours, *Id.* at 54, and he stated that he was acting firmly with his wife regarding financial decisions. *See Id.* at 76. His testimony demonstrated that he had cut back on his family expenses by canceling their internet and cable subscription, and he and his wife had stopped eating out. *Id.* at 77. He also stated that he had instituted a system where certain

bills are paid from his first monthly paycheck while other bills are paid from his second paycheck. *Id.* at 85-86. Furthermore, he provided a budget, which included his wife's income. Ex. A. While he testified that his budget demonstrated his ability to meet his current financial obligations with a surplus,² it did not account for food and gasoline, which the Individual acknowledged are actual monthly expenses. Tr. at 77-78. The budget similarly did not account for the maintenance of his eighteen-year-old truck. *Id.* at 83. He also testified that he does not currently have any savings. *Id.* at 82. Finally, he testified that, if he were to conclude that he could not meet his newly-created payment obligations, he would "definitely be in touch with [his creditors] sooner than later" and "not expect it to just go away." *Id.* at 88.

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual should not be granted access to a security clearance. I cannot find that granting the Individual access to a DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

As previously stated, the Individual's documented history of indebtedness, inability or unwillingness to satisfy his debts, and admission to incurring additional, unnecessary indebtedness establish a security concern under Guideline F. Guideline F at ¶ 19(a)–(c), (e). However, an individual may mitigate such financial concerns by demonstrating that he or she "has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." Guideline F at ¶ 20 (d).³ After reviewing the record, I cannot find that the Individual has carried his burden to mitigate the financial concerns in this case.

I note that the Individual appears to have a stable position with the contractor, and his supervisor considers him to be a valuable employee. Tr. at 29. I also note that the Individual's wife is currently employed and therefore able to contribute to resolving the Individual's outstanding debts. Furthermore, the Individual has certainly demonstrated that he has begun to repay his overdue creditors. In some instance, he has completely satisfied the previously delinquent accounts. However, the record presents two significant issues. First, the Individual failed to begin addressing his delinquent accounts, despite having the apparent ability to do so, until after he received the Notification Letter. Second, the Individual's budget, upon which he predicts his ability to resolve current financial difficulty—and forestall future financial difficulty—is conspicuously incomplete.

² The budget shows a monthly surplus of \$438. During the hearing, the Individual stated that he cancelled his \$189 internet service. Tr. at 50. He also stated that, after June 2018, one of his listed debt accounts will be satisfied, which will free up another \$550. *Id.* at 52. After June 2018, the Individual's budget may therefore demonstrate a monthly surplus of \$1,177.

³ The Adjudicative Guidelines list several other conditions that may mitigate financial concerns, but the above condition most closely matches the factual circumstances in this case.

As to the first issue, the Individual acknowledged that, despite obtaining a better paying job with the contractor in June 2017, he did not immediately address the above delinquent accounts. Then, after his PSI in November 2017, during which he discussed each delinquent account, the Individual chose not to take any apparent action to address his debt. Instead, he waited until the pendency of this administrative proceeding to begin contacting his creditors in late February 2018. As a result, the Individual can only demonstrate an approximately two-month history of making scheduled payments to resolve the outstanding debts. While the Individual credibly testified that he felt “overwhelmed” by his financial troubles, I do not find it credible that he did not know how to begin addressing the delinquent accounts because, during the PSI, the Individual stated that he was aware of credit counseling services. Ex. 8 at 98.⁴ He even stated that he intended to reach out to those services. *Id.* at 105. His failure to do so demonstrates that he chose to delay in addressing the issue. Furthermore, I do not find it credible that his delay resulted from difficulty locating his creditors. While the Individual did not provide much detail to explain the source of this alleged difficulty, his recent success in setting up payment plans with his creditors within two months of receiving the Notification Letter demonstrates that he has had the ability to reach out and locate his creditors but, again, chose not to. Thus, the evidence does not weigh in favor of finding that the Individual has initiated a good-faith effort to resolve his debts.

Turning to the second issue, while the Individual’s creation of a budget is a step in the right direction, the conspicuous absence of identified expenses (such as food, gasoline, and vehicle maintenance), along with his failure to accumulate savings despite a listed surplus, leads me to conclude that the Individual may have other unidentified expenses and that he has not put forth sufficient effort to thoroughly consider and understand his financial situation.

Based on the foregoing, I do not find that the Individual has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts. Therefore, I conclude that the Individual has not resolved the security concerns associated with Guideline F.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline F of the Adjudicatory Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

James P. Thompson, III
Administrative Judge
Officer of Hearings and Appeals

⁴ He also indicated that he may have taken a required credit counseling course during his 2008 bankruptcy. Ex. 8 at 20-22. However, he could not remember whether he completed the program. *Id.* at 21.